When does a Collecting Bank become a Debtor? — Two recent cases sharply illustrate the divergence of judicial opinion regarding the liabilities of a bank that has collected paper for another. In one instance the collection was made before the insolvency of the collecting bank, and after insolvency the latter was held a trustee for the amount collected. *Winstandley* v. *Second Bank of Louisville*, 41 N. E. Rep. 956 (Ind.). In the other case the collection was made after insolvency, but before assignment, and the collecting bank was held a debtor. *Sayles* v. *Cox*, 32 S. W. Rep. 626 (Tenn.).

The Indiana court assumes that the collecting bank was a trustee, and devotes itself chiefly to the discussion of whether the trust fund can be traced into the bank assets. This assumption seems erroneous. The ordinary understanding and usage between banks and their customers, when notes are indorsed to a bank for collection, is not that the bank is to keep separate the proceeds and remit them *in specie*, but that they are to be turned into the general funds of the bank, which then becomes liable for the amount either by a check to the customer, or a draft in his favor upon some third person. Such being the usual understanding, it is just to hold, in the language of the Massachusetts Supreme Court, that "one who collects commercial paper through the agency of banks must be held to impliedly contract that the business may be done according to their well known usages, so far as to permit the money collected to be mingled with the funds of the collecting bank." *Freeman's Bank* v. *National Tube Co.*, 151 Mass. 413. As pointed out in *Tinkham* v. *Heyworth*, 31 Ill. 519, banks charge no fee for holding money collected, except the right to use it until it is demanded, and if they are not to be allowed to exercise this, they must be entitled to compensation as safety deposit companies for moneys collected, — an idea not apt to enlist commercial favor. Certainly all arguments based upon commercial convenience and usage support the view that after collection the collecting bank should be considered a debtor, and if it becomes insolvent before the customer has been paid the latter must come in with the other general creditors. Nothing in this, of course, prevents a collecting bank from making itself a trustee by special understanding with its customer, as in *Bank* v. *Weems*, 69 Tex. 489.

The Tennessee case errs in the opposite direction. When the officers of a bank know it to be insolvent at the time they accept the paper for collection, it is a fraud upon its customer for the bank to take the proceeds in exchange for its own liability, and after collection they should be treated as trust property for the customer's benefit. *Somerville* v. *Beal*, 49 Fed. Rep. 790; *Jockusch* v. *Towsey*, 51 Tex. 129.

RECENT CASES.

Accident Insurance — Construction of Policy. — *Held*, under a policy insuring "against the loss of the money value of his time," a recovery may be had for time actually lost, though the employer of the insured continued his pay during his disability. *Globe Acc. Ins. Co.* v. *Helwig*, 41 N. E. Rep. 976 (Ind.).

Whether or not an ordinary accident policy is a contract of indemnity, there can be no doubt that the court was right in assuming this particular one to be of that nature. As to the question of loss to the plaintiff when his employer had continued his wages,

it would seem to turn on whether the amount received was derived from the enforcement of a legal right, or was a pure gift. Proceeding on the latter assumption, as the court did, the decision is sound, but the former case might easily arise, as, for instance, by the temporary illness of a school teacher.

ADMIRALTY — SUBJECT MATTER OF SALVAGE — GAS FLOAT IN A RIVER. — A float, fifty feet long, with ends shaped like the bow of a vessel, but without mast or rudder, was moored in a river as a beacon. It contained a gas cylinder, the light being fixed on a structure fifty feet high, the gas supplying it continuously for six weeks. No one was stationed upon the float, which went adrift, and was secured by the plaintiff, who assisted the Trinity yacht in getting it off. *Held*, the float was not subject matter of salvage. *Gas Float Whitton, No. 2*, 12 *The Times* Law Rep. 109.

The opinion emphasizes the point that jurisdiction as to salvage is limited to claims for services to a ship, her equipment, cargo, etc. And the term "ship" is to be used only in the ordinary meaning among those conversant with shipping business. A more liberal construction seems to have been placed upon the word in *The Mac*, L. R. 7 Pro. Div. 127, where a hopper barge was held subject of salvage. Certain passages in the opinions in the latter case might well justify the position taken by the respondents in the present appeal. In America the cases conflict upon both points. *A Raft of Spars*, Abb. Adm. Rep. 485; *Fifty Thousand Feet of Timber*, 2 Lowell, 64, and *Bywater* v. *A Raft of Piles*, 42 Fed. Rep. 917, hold the articles named subject to salvage, though of course not to be defined as "ships." *Tome* v. *Four Cribs*, Taney's Dec. 533, and the English case of *Palmer* v. *Rouse*, 3 H. & N. 505, are apparently *contra*, though perhaps affected by custom or statute. *Cope* v. *Valette Co.*, 119 U. S. 625, *held*, that the District Court had no jurisdiction over the salvage of a floating dry dock, and the court seems to incline to the strict definition of the principal case, though noticing (p. 630), without comment, the conflict of authority in regard to timber. But perhaps, as is said in 42 Fed. Rep. 917, the cases vary so widely in their circumstances that all of the decisions may be reconcilable, though not without infringing upon the strict rule laid down in the principal case.

AGENCY — VICE-PRINCIPAL BECOMES FELLOW SERVANT WHEN. — Plaintiff's intestate was killed while engaged in a work in which the foreman of the shop was assisting him. It was no part of the business of the foreman to assist the deceased. *Held*, the foreman was a fellow servant of the deceased, not a vice-principal, by virtue of their being engaged upon the same work. *Hartford* v. *No. Pac. R. R.*, 64 N. W. Rep. 1033 (Wis.).

The decisions on this point are numerous and there is some conflict in the results reached, but since *Railroad Co.* v. *Baugh*, 149 U. S. 368, the doctrine of the principal case has been pretty well established. *Hanna* v. *Granger*, 28 Atl. Rep. 659 (R. I.), is a recent well considered decision in accord.

CARRIERS — LIABILITY OF A RAILWAY COMPANY FOR A TORT OF ITS SERVANT. — Plaintiff's intestate was shot by the depot agent of the defendant railway for abusive language. Deceased had called to receive his baggage, and, having been given receipts for it, was stepping out of the door when he was hit by the bullet. *Held*, a finding by the jury that the agent was acting within his employment so as to render the railway company liable will not be disturbed. *Daniel* v. *Petersburgh Ry. Co.*, 23 S. E. Rep. 327 (N. C.).

The case is a close one. The trial court might have been justified in ordering a contrary finding, on the ground that the agent was acting from a sole motive, and that his employment as regarded the decedent had ceased. As to such action by the trial judge, it is interesting to compare the case with *McGilvray* v. *West End St. Ry.*, 164 Mass. 122, deciding that a street railway company is not liable for an assault by a conductor on a person who had just alighted from the car outside the car-house. If the decision of the majority of the court is not open to exception in the principal case, the language of the concurring judge is, as he seems to put the liability on the ground of common carrier, regardless of whether or not the agent was acting at the time in the course of his employment. Does a railway company owe the duty of insurer to a man on its premises in decedent's position? Surely not. The contract of carriage was at an end.

CARRIERS — SLEEPING CAR COMPANIES — LIABILITY FOR MONEY LOST BY PASSENGER. — The plaintiff sues the Pullman Company for a sum of money lost at night while he was a passenger on one of its cars. *Held*, the company's duty is to maintain such a watch "as may be reasonably necessary to secure the safety" of such of the passenger's goods as are properly in his possession as a traveller. If the loss occurs while the passenger is asleep, the burden is on the company to prove such case. *Kates* v. *P. P. C. Co.*, 23 S. E. Rep. 186 (Ga.).

Ever since sleeping cars have been in general use, the courts with almost uninterrupted regularity have decided that inasmuch as the sleeping car companies are neither innkeepers nor common carriers, they are not under the extreme liability attaching to those occupations. *P. P. C. Co.* v. *Smith*, 73 Ill. 360; *Blum* v. *S. P. P. C. Co.*, 1 Flippin, 500; *Lewis* v. *N. Y. P. C. Co.*, 143 Mass. 267. The Georgia court discusses the relationship of the company to the passenger on its own merits, and, notwithstanding the necessity which the sleeping car has become, the defenceless condition of the passenger, and the consequent resemblance to that state of facts which developed the heavy responsibility of the innkeeper, reaches the same conclusion as the cases cited. The single case opposed to the current of authority is *P. P. C. Co.* v. *Lowe*, 28 Neb. 239, holding the company an innkeeper.

CONFLICT OF LAWS — FOREIGN JUDGMENTS — CONCLUSIVENESS. — *Held*, Judgments rendered in France, by whose laws judgments of the United States courts are reviewable on their merits, are not conclusive when sued upon in the United States, but are only *prima facie* evidence of the justice of the plaintiff's claim. (Fuller, C. J., Harlan, Brewer, and Jackson, JJ., dissenting.) *Hilton* v. *Guyot*, 16 Sup. Ct. Rep. 139.

The case presents a fundamental question, and one likely to occur very often. The decision, therefore, is of more than ordinary importance. On strict common law principles it can hardly be supported. It has long been settled that our courts will respect and enforce private rights acquired under foreign laws, and it is difficult to see why a right acquired under a foreign judgment does not come within this category. The fact that France does not recognize United States judgments as conclusive would seem to be a political argument, rather than a legal ground, for refusing to recognize the judgments of France. It presents a question of the comity of nations. The court falls into the error of supposing that comity means reciprocal courtesy. If comity is a part of the common law, as we believe it to be, the courts have no discretion to apply it in one way to one country and in another way to another country. The dissenting opinion of Mr. Chief Justice Fuller seems entirely sound.

The decision follows the rule adopted in most of the Continental countries, and which was formerly the rule in England; *Roach* v. *Garvan*, 1 Ves. Sr. 157; but has since been disapproved by the English courts, which now hold that foreign judgments are impeachable only on the ground of fraud or lack of jurisdiction. *Nouvion* v. *Freeman*, 15 App. Cases, 1, 9; *Goddard* v. *Gray*, L. R. 6 Q. B. 139–148. Some of our State courts are in accord with the modern English doctrine, and treat foreign judgments as conclusive. *Dunstan* v. *Higgins*, 138 N. Y. 70 (1893); *Rankin* v. *Goddard*, 55 Me. 389; *Baker* v. *Palmer*, 83 Ill. 568.

CONFLICT OF LAWS — FOREIGN JUDGMENT — SERVICE OF PROCESS. — A defendant who is duly served with process while temporarily in Sweden, and who appears by attorney, is amenable to the jurisdiction of its courts, and a judgment against him will be enforced in the courts of England. *Carrick* v. *Hancock*, 12 *The Times* Law Rep. 59.

A foreign judgment *in personam* obtained without service of process on the defendant is internationally invalid, but if the defendant appears, though under protest, any judgment will be enforced by the courts of his domicil if the court of original judgment had jurisdiction. *Voinet* v. *Barrett*, 58 L. J. Q. B. 39; *Boissière & Co.* v. *Brockner & Co.*, 6 *The Times* Law Rep. 85. The court holds also that the duty of allegiance is correlative with the protection given by a state to every one within its territory, and that a valid service of process may be made upon a defendant as soon as he enters the country, irrespective of the time he intends to remain.

CONFLICT OF LAWS — GENERAL COMMERCIAL LAW — RIGHT OF STATES TO CHANGE. — Defendant in Wisconsin put his name on the back of a note payable in Massachusetts. According to decisions in Wisconsin, this made him an indorser; according to United States decisions, he was a joint maker. A statute in Massachusetts made notice to such person necessary to his liability. *Held*, that the United States court would not follow the decisions of the State court in matters of general commercial law, and that defendant was a joint maker; but that the court would apply the statute of Massachusetts, under which defendant was not liable. *Phipps* v. *Harding*, 70 Fed. Rep. 468.

The first point is the settled doctrine in the Federal courts. It was argued from this and from certain language in *Swift* v. *Tyson*, 16 Pet. 1, 18, and *Watson* v. *Tarpley*, 18 How. 517, 521, that State statutes should also be disregarded. The *dicta* referred to do give ground for the contention, but the court refuses to follow them and limit the legislative power of the States. The decision on the second point cannot be objected to in effect, but it seems perhaps to be somewhat inconsistent with the first.

CORPORATIONS — LIABILITY OF PROMOTERS. — Several persons associated themselves for the purpose of organizing a corporation, entered into contracts in the name of the proposed corporation, and then abandoned their purpose. *Held*, the relation of such promoters to each other is that of principal and agent, and each is liable for such contracts as he authorized or ratified. *Roberts Manuf. Co.* v. *Schlick*, 64 N. W. Rep. 826 (Minn.).

This is the doctrine admirably stated in *Johnson* v. *Corser*, 34 Minn. 355, and, it is submitted, is correct. The notion that such promoters are liable as partners or nothing (*Martin* v. *Fewell*, 79 Mo. 401), is indefensible. The ordinary principles of agency cover the case.

EQUITY — ASSIGNMENT FOR BENEFIT OF CREDITORS — MARSHALLING ASSETS. — Where a debtor made a general assignment for all his creditors, it was *held* that a creditor whose debt was partly secured by a lien on specific property could recover from the assignee on the basis of his whole debt without deducting the amount which he would realize on his separate lien. *Winston* v. *Biggs*, 23 S. E. Rep. 316 (N. C.).

In many States a secured creditor is allowed to receive a dividend only upon the balance remaining unpaid after exhausting his security. *Wurtz* v. *Hart*, 13 Iowa, 515; *National Union Bank* v. *National Mechanics' Bank*, 30 Atl. Rep. 913 (Md.); *Merchants' Bank* v. *Eastern Ry. Co.*, 124 Mass. 518. The prevailing view, however, is in accord with the principal case. *Allen* v. *Danielson*, 15 R. I. 481; *West* v. *Bank of Rutland*, 19 Vt. 403; *Paddock* v. *Bates*, 19 Ill. App. 470; *Moses* v. *Raulet*, 2 N. H. 488; *Graeff's Appeal*, 79 Pa. St. 146; *Kellock's Case*, L. R. 3 Ch. App. 769. These latter cases, it is submitted, are correct, resting on the theory that the security is something collateral, and does not reduce the debt, but only secures the creditor *pro tanto* in case the debtor cannot pay.

EQUITY — INJUNCTION TO RESTRAIN COLLECTION OF DEBT BY ASSIGNING CREDITOR. — Defendant was indebted to plaintiff, and W. was indebted to defendant. Defendant made a written assignment to plaintiff of W.'s debt to him, and W. assented. Defendant then sued W. for the debt assigned and recovered, W. failing to protect himself by pleading the novation. Plaintiff now petitions for an injunction to restrain defendant from collecting the judgment. *Held*, that plaintiff still had his remedy at law against W., who had subjected himself to a double recovery. Injunction refused. *Perry* v. *Thompson*, 18 So. Rep. 524 (Ala.).

Plaintiff's rights of course are not prejudiced unless W. is insolvent, in which case the injunction should have been granted.

EQUITY — STATUTE OF LIMITATIONS — MISTAKE. — The plaintiff in this case claims under a will which was discovered twenty years after the testator's property had been distributed among his next of kin. *Held*, that the action was not barred, since there was mutual and blameless mistake. *Crawford's Adm'r* v. *Smith's Ex'r*, 23 S. E. Rep. 235 (Va.).

In this country the statute of limitations operates as a bar in equity, as well as law, *ex suo vigore*. But where through fraud or mistake it would be inequitable to permit it to bar the suit, courts of equity interpose, as in England. Fraud and mistake come within the same rule. *Brooksbank et al.* v. *Smith*, 2 Younge & Coll. 58; *Hough* v. *Richardson*, 2 Story, 659; Story's Equity Jurisprudence, § 1521 *a*.

EVIDENCE — CONFESSION — ADMISSIBILITY. — *Held*, that a confession to an officer, who informed his prisoner "that it might go lighter with him if he told all about" the crime, was admissible as evidence. *Thomas* v. *State*, 32 S. W. Rep. 771 (Tex.).

The decision is based upon the erroneous assumption that a positive promise is necessary in order to render a confession inadmissible. It might well have been held that the officer's words to the defendant furnished an inducement fatal to the trustworthiness of the confession, and this conclusion is authorized in the books. *Com.* v. *Curtis*, 97 Mass. 574; *State* v. *York*, 37 N. H. 175. Of course, were a positive promise made, the confession obtained thereby would be properly excluded. Such was the decision in the recent case of *State* v. *Smith*, 18 So. Rep. 482 (Miss.).

EVIDENCE — INSANITY. — Defendant was indicted for burglary; plea insanity. *Held*, that evidence by the prisoner's mother that she had another son, an imbecile from birth, should be admitted. *Schaeffer* v. *State*, 32 S. W. Rep. 679 (Ark.).

The court cites *People* v. *Garbutt*, 17 Mich. 9, as directly in point, and the decision follows the weight of authority in this connection. Such evidence of a family trait is cumulative, and is only admissible in connection with and in support of other evidence tending to a direct proof of the same fact. This the court recognized in the present case. See *Snow* v. *Benton*, 28 Ill. 306; *People* v. *Smith*, 31 Cal. 466; and Wharton & Stilé's Medical Jurisprudence, §§ 375, 377.

EVIDENCE — HEARSAY CONTRADICTING DYING DECLARATIONS. — *Held*, that dying declarations may be impeached by proof of previous contradictory statements by the deceased. *State* v. *Lodge*, 33 Atl. Rep. 312 (Del.).

The general rule is that a witness can be discredited by proof of contradictory statements made out of court, only where he has been given an opportunity to explain. 1 Greenleaf on Evid., § 462. In accordance with this, such statements have been held inadmissible where it has been impossible to call the attention of the witness to them. *Weir* v. *McGee*, 25 Tex., Supp., 20, where the testimony was by interrogatories, and the witness not in court. *Craft* v. *Comm.*, 81 Ky., 250, and *Ayres* v. *Watson*, 132 U. S. 394, where the witness had died. These cases seem closely in point, and the argument of the court here is not altogether satisfactory. It is that, since the defence is deprived of cross-examination in the matter of the dying declarations, the previous statements should be admitted without the usual foundation, in order to offset the loss. This sounds like an attempt to make a right of two wrongs. One judge dissents.

EVIDENCE — OTHER CRIMINAL ACTS TO PROVE INTENT. — Defendant was on trial for manslaughter. One Emma Hall died on February 3, 1895; her death was the result of an abortion. Deceased was shown to have gone to the house at which her death occurred, for the purpose of having a criminal operation performed. Defendant was shown to have attended her from January 25 until her death. Defendant was proved to have concealed and lied about the circumstances of Emma Hall's death. *Held*, that the testimony of three witnesses, that defendant had performed operations upon them at the house where deceased died, and about the same time, was properly admitted. *People* v. *Seaman*, 65 N. W. Rep. 203 (Mich.).

The testimony of these three witnesses tends to prove that defendant treated deceased with the purpose and object of procuring an abortion. Since this evidence has probative force tending to prove defendant's purpose or intent in his attendance upon deceased, the objection that to admit this evidence is to admit evidence of other criminal acts of defendant is not fatal. In *Reg.* v. *Briggs*, 2 Moody & R. 199, the defendant was on trial for robbery; a witness was allowed to testify that defendant had committed another robbery in the same vicinity, and about the same time as the robbery for which defendant was on trial. The authorities fully sustain the admission of the evidence objected to in the principal case. *People* v. *Sessions*, 58 Mich. 594; *Kramer* v. *Com.*, 87 Pa. St. 299; *Thayer* v. *Thayer*, 101 Mass. 111; *Reg.* v. *Gray*, 4 F. & F. 1102; *Reg.* v. *Dorset*, 2 Cox C. C. 243; *Reg.* v. *Garner*, 3 F. & F. 681.

INSURANCE — MARINE — VALUED POLICY AGAINST FIRE — DAMAGE BY STRANDING. — A ship, insured by a valued policy against fire, became a constructive total loss through stranding, and while stranded was totally consumed by fire. *Held*, that the underwriters were liable, and that the valuation in the policy was binding. *Woodside* v. *Globe Marine Ins.*, 12 *The Times* Law Rep. 97.

The principal question in the case would seem to be whether the ship, at the time of the fire, could still be fairly deemed a ship, or must be regarded as a mere collection of materials. The case was argued under what seems to have been an agreement supporting the former view. It bears an analogy to those in which a building, by reason of explosion, storm, or otherwise, has collapsed, and the ruins have caught fire and been consumed. The question in such cases is whether, at the time of the burning, the building may still be called such, or must be deemed merely a heap of rubbish, the law seeming in the first case to permit a recovery upon the policy, though for fire only. *Nave* v. *Mut. Ins. Co.*, 37 Mo. 430; *Evans* v. *Columbian Ins. Co.*, 44 N. Y. 146; May, Ins., § 412; Biddle on Ins., § 771. For the doctrine that the stated valuation determines the amount of the insurer's liability, see, in addition to the cases cited, *Irving* v. *Manning*, 1 H. L. C. 287.

JUDGMENT LIEN — PRIORITY ON AFTER-ACQUIRED LAND. — The plaintiffs and defendants both had judgments against a third party, who, after the judgments had been rendered, acquired the land in dispute. A statute provided that a lien should arise on any after-acquired land in favor of the judgment creditor. The defendants' judgment in this case was senior, and they claimed satisfaction of their judgment in full before the junior judgment of the plaintiffs should attach. *Held*, that the liens of the docketed judgments attaching to the land at the same moment, there should be no priority, and the proceeds of the land should be applied *pro rata* to the judgments. *Moore et al.* v. *Jordan et al.*, 23 S. E. Rep. 259 (N. C.).

In *Creighton* v. *Leeds, Palmer, & Co.*, 9 Or. 215, upon the same facts and under a similar statute priority of lien was allowed the senior judgment on the ground that, since the lien was an incident of the judgment, the priority of the lien would be coextensive with that of the judgment. This view seems sounder, and is maintained by a dissenting minority in the present case. Previous decisions in another State support neither of

these views, but give priority to the judgment creditor, who first proceeds to enforce his judgment. In one case this is explicitly based on the ground that the "writ and not the judgment created the lien." *Bliss* v. *Clark*, 39 Ill. 590; *McDonald* v. *Crandall*, 43 Ill. 231; Freeman on Judgments, § 355.

MUNICIPAL CORPORATIONS — COUNTIES — FAILURE TO REPAIR BRIDGE. — *Held*, in the absence of a statute imposing such liability, a county is not liable for injuries resulting from defects in a bridge, though the county is under a duty to keep it in repair, and the non-repair is due to the negligence of the county officers. *Board of Com'rs of Jasper Co.* v. *Allman*, 42 N. E. Rep. 206 (Ind.).

This decision overrules a long line of Indiana cases, beginning with *House* v. *Montgomery Co.*, 60 Ind. 580 (1878), and extending to *Parke Co.* v. *Wagner*, 138 Ind. 609 (1894). The rule that a county is a subdivision of the State for governmental purposes, and is not liable for the negligence of its officers, unless expressly made so by statute, is recognized by an overwhelming majority of the decisions, both English and American. The rule seems to have originated in the case of *Russell* v. *The County of Devon*, 2 T. R. 667. The only jurisdictions now holding *contra* to the general rule are Iowa and Maryland. See *Yordy* v. *Marshall Co.*, 80 Iowa, 405; *Calvert Co.* v. *Gibson*, 36 Md. 229. The opinion in the principal case contains a complete citation of the modern authorities.

PARTNERSHIP — TRANSFER OF PARTNER'S INTEREST AFTER INSOLVENCY — RIGHTS OF FIRM CREDITORS. — A. of the firm of A. & B. transferred his interest in the firm assets to B. after the firm was known to be insolvent. B., according to the view of the majority of the court, agreed to hold the assets in trust for the firm creditors. B. conveyed to C., who took with full notice of all the facts. C. used the conveyed property in his business under the name of C. & Co., holding B. out as his partner. In fact there was no partnership. *Held*, with a minority dissenting on both points, (1) that creditors of the ostensible firm of C. & Co., upon C.'s assignment in insolvency, were entitled to have the property used in C. & Co.'s business applied as firm assets to the payment of their claims; (2) that creditors of the original firm of A. & B. should come in against this property *pari passu* with the creditors of C. & Co. *Thayer* v. *Humphrey*, 64 N. W. Rep. 1007 (Wis.).

Ordinarily, creditors of an ostensible partnership are entitled to priority of payment out of the property used in the business, upon the insolvency of the true owner. *In re Rowland and Crankshaw*, L. R. 6 Ch. Ap. 421; *Ex parte Hayman*, 8 Ch. Div. 11. In the present case, however, the creditors of C. & Co. should be postponed to the creditors of A. & B. to the extent that the assets of A. & B. can be found *in specie*, or distinctly traced. If B. agreed to hold in trust, of course C. took as trustee for the firm creditors of A. & B. If there was no agreement to hold in trust still, as the conveyances of A. & B. were both made after the firm was known to be insolvent, both were void for fraud as against the firm creditors, who therefore have a prior lien on the original firm assets in the hands of C.'s assignees. *Ex parte Mayon*, 4 De G., J. & S. 664; *In re Kemptner*, L. R. 8 Eq. 286; *Peyser* v. *Myers*, 135, N. Y. 599 (*semble*); Lind. on Part. (6th ed.), 347, 716. It is not suggested in the case that the firm creditors of A. & B. were guilty of laches.

PERSONS — WIFE'S SEPARATE ESTATE IN EQUITY — WHEN CREATED. — Money which a husband allows his wife to acquire by the sale of poultry, etc., to use as she pleases, and of which he loses sight till it has been invested in real estate by her for eighteen months, forms her separate estate. If she refuses to complete the purchase of the land, and pleads coverture, the vendor can sell the land to reimburse himself for the amount unpaid by her. *Snodgrass* v. *Hyder*, 32 S. W. Rep. 764 (Tenn.).

At common law a wife had no separate estate. All her chattels and earnings vested in her husband outright. Equity gradually modified this harsh doctrine, and allowed a wife an estate in property acquired by her, treating the husband as a constructive trustee. 2 Kent, 134, 143. Under this rule she could recover property promised her by her husband from his heirs, provided the rights of creditors did not intervene. This was held in spite of the rule that husband and wife could not contract. *Slansing* v. *Style*, 3 P. Williams, 337. As there was no statute in Tennessee enlarging the power of a married woman to bind herself by contract except in regard to conveyance of her estate, the court was bound by the common law rule. But it thought there was sufficient evidence from which to imply a gift to the wife, and that consequently the money formed her separate estate in equity. The second point, viz., that the vendor could sell the estate to recoup himself for the unpaid purchase money, seems equally clear. The court's ruling that the vendor had no right to a personal judgment against her is without exception in view of the weakness of the Tennessee statute in regard to married women. And though there is a division of opinion on the question whether a wife's separate estate can be bound by implication on her contract, *Murray* v. *Barlee*,

3 Myl. & Keene, 209, holding that it can, and *Yale* v. *Deverer*, 22 N. Y. 451, that it cannot, the court's ruling that it could not in this case is scarcely doubtful, as the evidence to show any implication was slim.

PROPERTY — COVENANT OF WARRANTY — MARRIED WOMEN'S ACT. — Defendant's wife owned real estate. Defendant lived on the land with his wife, and joined in her conveyance and covenant of warranty. The wife is dead. This is an action on the covenant by a remote grantee. *Held*, defendant is not bound. The covenant does not run with the land; the defendant having no such privity of estate as is essential to carry a covenant of warranty. *Mygatt* v. *Coe*, 42 N. E. Rep. 17 (N. Y.).

This case is interesting as showing one of the results of the Married Women's Act by which the wife holds absolute title to her real property as though she were unmarried. At common law the defendant would have been bound in this case, for he would have had an estate during coverture in his wife's property, and this would have constituted sufficient privity of estate to have carried the covenant with the land. *Robertson* v. *Norris*, 11 Q. B. 916; *Beale* v. *Knowles*, 45 Me. 479.

PROPERTY — EASEMENT IN STREET — ABANDONMENT. — Plaintiff owned property abutting on a street over which the defendant company had erected an elevated road. This action was brought for damages for the obstruction of plaintiff's street easements. The defendant attempted to establish an abandonment of these easements by proof of the following facts. Plaintiff's lot had been owned by one L., who had brought suit against the present defendant for the same obstruction. While the suit was pending, L. conveyed to G., the conveyance being accompanied by an attempt on the part of L. to reserve to himself by an unrecorded instrument the street easements and the right of suit for their obstruction. G. conveyed the lot to the plaintiff, who had no notice of this agreement. Then L. settled his action against the defendant company, and gave them a release from all claims by reason of the operation of their road, and declaring that he had intended such release at the beginning of his action. *Held*, that there was no effectual abandonment by L.; that the unrecorded agreement between L. and G. was inoperative at law, and that the plaintiff was entitled to damages for the obstruction of his easements. *Foote* v. *Metropolitan El. Ry. Co. et al.*, 42 N. E. Rep. 181 (N. Y.).

This case is peculiar in its facts. The conclusion reached as to the abandonment, which is purely a matter of intention and of fact, seems correct. See Washburn on Real Property, 4th ed., vol. ii. p. 371, and cases cited. The plaintiff was of course unaffected by the unrecorded agreement between his predecessors in title, and the rights of property in the street, being appurtenant, passed with the abutting land.

PROPERTY — LANDLORD AND TENANT — ASSIGNMENT OF RENT — REVERSION. — A. let premises to B. for five years. B. sublet a part of the premises to the defendant for the same time. Defendant assigned his lease to C., with covenant that his liability to B. should not be thereby altered. B. assigned back to A. all rentals due under his lease to defendant. A. then conveyed to plaintiff all his interest in land and existing leases held by him. C. failed to pay rent, and plaintiff sued defendant. *Held*, that, as B.'s lease to defendant terminated at same time as A.'s lease to B., leaving no reversion in B., B.'s assignment of rentals to A. amounted to an assignment of the lease of defendant, and this passed to plaintiff by A.'s subsequent assignment. Plaintiff therefore could sue defendant on latter's covenant to B., the effect of which made defendant primarily liable for the rent, and not as mere surety for C. *Latta* v. *Weis*, 32 S. W. Rep. 1005 (Mo.).

The contention of defendant's counsel was that B. retained a reversion because only the rentals were conveyed to A., and that A.'s assignment of his interest in the land gave plaintiff no right to the rentals which still belonged to A. The court seems properly to have held that, when B. parted with all beneficial interest in the land, to the very end of his own term, it amounted to a complete assignment.

PROPERTY — LANDLORD AND TENANT — IMPLIED COVENANT FOR QUIET ENJOYMENT. — The defendant, having a lease for eight years in certain premises, sublet them for ten years to the plaintiff, acting in good faith and under a *bona fide* mistake; the word "demise" was not used in the sublease nor was there any express covenant for quiet enjoyment. The plaintiff, being evicted at the end of eight years by the superior landlord, brings action against his lessor for breach of implied covenants. *Held:* (1) A covenant cannot be implied unless the word "demise" is used. (2) If such a covenant were implied it would extend only during the estate of the lessor. *Baynes* v. *Lloyd*, [1895] 2 Q. B. 610.

The court expresses doubt on the first point. It has been held otherwise in this country. *Duncklee* v. *Webber*, 151 Mass. 408. As to the second point, the court relies

on the doctrine that the implied covenant of a life tenant ceases with his life, which is undoubted law on both sides of the Atlantic. *McClowry* v. *Crogan*, 1 Grant, (Pa.) 311. But where the lessor's estate has determined through an act of his own doing, it has been held, both in this country and in England, that the lessee can recover against him. *Price* v. *Williams*, 1 M. & W. 6; *Duncklee* v. *Webber*, 151 Mass. 408. It seems a harsh doctrine that, when the tenant has got less than he bargained for through his landlord's negligence, the landlord cannot be held accountable.

PROPERTY — PURCHASE OF OUTSTANDING TITLE BY TENANT IN COMMON. — *Held*, that the general rule that a tenant in common may not acquire an outstanding title as against his cotenant, does not apply where the original interests of such cotenants were acquired under different instruments, from different sources, and at different times. *Stevens* v. *Reynolds*, 41 N. E. Rep. 931 (Ind.). See NOTES.

PROPERTY — STATUTE OF LIMITATIONS — PERMANENT AND TRANSIENT INJURY DONE BY A NUISANCE. — The defendant diverted the course of a stream in 1885, so that it ran against the pier of the plaintiff's. No substantial injury was done until 1890. Plaintiff brings this action for the actual damages suffered. *Held*, the statute of limitations did not commence to run until actual damage resulted. *Howard County* v. *Railroad*, 32 S. W. Rep. 651 (Mo.).

The case proceeds on the ground that when a nuisance is of such a character that the resulting damage cannot be measured once for all at the time of its creation, but depends upon future events, then the statute of limitation does not apply, for a new cause of action arises with every new encroachment; but when the nuisance has become permanent in its nature, so that the amount of injury can be estimated, then a cause of action arises to which the statute is applicable. 1 Wood on Limitations (2d ed.), § 180. It is to be observed that the decision is not in conflict with cases which hold that the period of prescription begins to run before there is actual damage. *Dana* v. *Valentine*, 5 Met. 8. See *Wells* v. *New Haven Co.*, 151 Mass. 49.

SALES — ACTION FOR PRICE — DAMAGES. — Defendant contracted with plaintiff for an article as follows. "In consideration of its delivery for me . . . at the express office specified below, I promise to pay $35, $10 on delivery at the express office, and the balance in monthly instalments," etc. Plaintiff delivered to express company and defendant refused to accept. The company then returned to the plaintiff, who held subject to defendant's order. *Held*, plaintiff could sue for the contract price, and was not limited to suing for damages for breach of contract. (Field, C. J., Allen and Norton, JJ., dissenting.) *White* v. *Solomon*, 42 N. E. 104 (Mass.).

The majority of the court assume, and the minority hold, that title did not pass. The question of title is therefore largely eliminated. The decision rests on the construction that delivery to the express company was the consideration for defendant's promise. On that construction, the plaintiff, having performed, could sue for the contract price, and the decision is clearly correct. See *Martineau* v. *Kitching*, L. R. 7 Q. B. 436, 455; *Tufts* v. *Griffin*, 12 S. E. Rep. 68 (N. C.). The minority of the court construed the contract as conditional, as an ordinary instalment contract, and correctly hold on this construction, that the vendor, having both title and possession, has simply an action for damages for breach of contract. See *Morse* v. *Sherman*, 106 Mass. 430–434.

TAXATION — LIABILITY ON BONDS OF ANOTHER STATE. — An insurance company holding bonds of the State of Georgia, which are deposited with the treasurer of that State, is liable to taxation upon them in Louisiana. *State* v. *Board of Assessors*, 18 So. Rep. 519 (La.).

The actual situs of personal property, having a visible existence, and of State and municipal bonds and circulating notes of a bank generally, determines the place where such property is taxable. But personal property, such as bonds, mortgages, and debts, in general, have no situs except the domicil of their owner. *State Tax on Foreign held Bonds*, 15 Wall. 300. As the bonds in the principal case were not in circulation, but bought by the company from the State of Georgia, and then deposited there probably as indemnity for payment of its risks, they formed the avails of the company, as the court said, and would seem to be taxable at the domicil of their owner.

TORTS — DECEIT — INABILITY TO PERFORM A PROMISE. — Defendant contracted with plaintiff to do a certain thing without revealing the fact that, by a contract with a third party, he had put it out of his power to perform. *Held*, that an action for deceit lay. *Traber* v. *Hicks*, 32 S. W. Rep. 1145 (Mo.). See NOTES.

TORTS — NEGLIGENT MISREPRESENTATION. — Declaration alleged that defendant prepared an abstract of title for a landowner; that defendant knew this abstract was to be used in effecting a mortgage loan; that the mortgage loan was effected; that

plaintiff afterwards became the assignee of this mortgage; that in purchasing the note secured by this mortgage plaintiff relied on the abstract prepared by defendant for the purpose of effecting the mortgage loan; that said abstract did not disclose the true record title; and that plaintiff suffered damage. *Held*, sustaining defendant's demurrer, that the declaration did not set forth a good cause of action. *Tapley* v. *Wright*, 32 S. W. Rep. 1072 (Ark.).

It is clear that defendant is under no contractual liability to plaintiff. If it is true that it is not the usual course of business for the purchaser of a mortgage note to rely on the abstract furnished to the original mortgagee, it is clear that defendant is not liable to the plaintiff in an action sounding in tort. But if it is the usual course of business that one purchasing a mortgage note may and does, on making his purchase, rely on the abstract prepared for the original mortgagee, there is American authority for holding defendant liable in tort. Minority opinion in *Savings Bank* v. *Ward*, 100 U. S. 195, at 207; *Dickel* v. *Abstract Co.*, 14 S. W. Rep. 896 (Tenn.). See also *Telegraph Co.* v. *Dryburg*, 35 Pa. St. 298; *Tobin* v. *Tel. Co.*, 23 Atl. Rep. 324 (Pa.). *Blood Balm Co.* v. *Cooper*, 83 Ga. 457. *Contra Savings Bank* v. *Ward*. In England, in any view of the facts of the principal case, defendant's demurrer would be sustained. *Peek* v. *Derry*, 14 Appeal Cases, 337; *Scholes* v. *Brook*, 63 L. T. N. S. 837; *Le Lievre* v. *Gould*, L. R. (1893), 1 Q. B. 491.

TRUSTS — BANKS — NOTES FOR COLLECTION — INSOLVENCY. — Plaintiff bank sent the B. bank various claims for collection. After collection, and before remittance to plaintiff, the B. bank failed, and defendant was appointed assignee. Plaintiff sued assignee as a preferred creditor for the amount of the claims so collected, contending that the B. bank held them in trust. *Held*, that plaintiff should succeed. When a trustee mingled his own funds with those of trust property, the latter being actually represented among his assets, the beneficiary had a preferred claim for the amount of the trust. *Winstandley* v. *Second Bank of Louisville*, 41 N. E. Rep. 956 (Ind.). See NOTES.

TRUSTS — BANKS — NOTES FOR COLLECTION — INSOLVENCY. — Plaintiff sent a note to the J. bank for collection. When the latter received the note it knew itself to be insolvent, but collected the note before it went into the hands of defendant assignee. Plaintiff filed a preferred claim for the amount of the note. *Held*, that, as collection was made before actual assignment even though after known insolvency, the J. bank became a debtor, and plaintiff must come in with general creditors. *Sayles* v. *Cox*, 32 S. W. Rep. 626 (Tenn.). See NOTES.

TRUSTS — LACK OF BENEFICIARIES. — *Held*, that a bequest to a church, "to be used in solemn masses for the repose of my soul," is equally invalid, whether as a direct bequest to the church, or as creating a charitable use, or as creating a private trust, there being in the latter instance no living beneficiary. The court decreed that the sum should remain in the hands of the executors, although it defeated the testator's wishes, and although the church was willing to perform the intended trust. *Festorazzi et al.* v. *St. Joseph's Catholic Church of Mobile, et al.*, 18 So. Rep. 394 (Ala.). See NOTES.

REVIEWS.

THE PRINCIPLES OF EQUITY AND EQUITY PLEADING. By Elias Merwin, late of the Boston Bar, and Professor in the Law School of Boston University. Edited by H. C. Merwin. Boston and New York: Houghton, Mifflin and Company. 1895. 8vo, pp. xci, 658.

"The lectures which compose this book were delivered by Mr. Merwin at the Law School of Boston University," says Mr. H. C. Merwin, the son, in his Preface. "The author drew his illustrations chiefly, though by no means exclusively, from the English Courts, from the Federal Courts, and from the Supreme Court of Massachusetts," as was natural in a lecturer in the Boston University Law School. The "editors," however, of whom there were apparently others than Mr. H. C. Merwin, for the Preface mentions two other than he, have added in brackets the valuable